

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
JAY F. PATTERSON AND
RICHARD D. WINDHAM,

Appellants,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 79-132

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from the imposition of a \$250 civil penalty for the alleged violation of Section 8.02(3) of respondent's Regulation 1, came before the Pollution Control Hearings Board, Nat W. Washington, Chairman, Chris Smith and David Akana (presiding) at a formal hearing on December 5, 1979 in Seattle.

Appellant Jay F. Patterson appeared pro se.; respondent was represented by its attorney, Keith D. McGoffin.

Having heard the testimony, having examined the exhibits and

1 having considered the contentions of the parties, the Board makes
2 these

3 FINDINGS OF FACT

4 I

5 On July 11, 1979 at about 11:00 a.m., respondent's inspector
6 visited property owned by Richard D. Windham located at 19028 NE
7 132nd Street in Woodinville as a result of a complaint of an outdoor
8 fire received by the agency on the previous day. The inspector
9 found a smoldering fire which contained tree stumps and asphalt
10 shingles. The inspector determined that the asphalt shingles came
11 from waste materials located on appellant Jay F. Patterson's
12 property adjacent to the burn site.

13 For the above occurrence appellant was sent a notice of
14 violation from which followed a \$250 civil penalty for the alleged
15 violation of Section 8.02 of Regulation 1.

16 II

17 The fire was caused by a young boy who was an employee of
18 appellant Patterson. The boy acted outside the instructions given
19 him, which was to take the materials to a dump. Appellant is
20 renovating his personal home and a repeat of this violation is not
21 likely.

22 Appellant Richard Windham had no responsibility for the fire.

23 III

24 Pursuant to RCW 43.21B.260, respondent has filed a certified
25 copy of its Regulation 1 and amendments thereto which we notice.

26 Section 8.02(3) makes it unlawful for any person to cause or

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER 2

1 allow any outdoor fire containing asphalt or petroleum products.

2 Section 3.29 provides for a civil penalty of up to \$250 per day
3 for each violation of Regulation 1.

4 IV

5 Any Conclusion of Law which should be deemed a Finding of Fact
6 is hereby adopted as such.

7 From these Findings the Board comes to these

8 CONCLUSIONS OF LAW

9 I

10 The civil penalty was not properly imposed upon appellant
11 Windham and should be vacated as to him.

12 II

13 Appellant Patterson is responsible for the violation of Section
14 8.02(3) of Regulation 1 as alleged. The imposition of a civil
15 penalty is proper but under the circumstances of this case the
16 amount assessed should be reduced to \$125 and \$75 thereof suspended.

17 III

18 Any Finding of Fact which should be deemed a Conclusion of Law
19 is hereby adopted as such.

20 From these Conclusions the Board enters this

21 ORDER

22 1. The imposition of a \$250 civil penalty upon appellant
23 Windham is reversed.

24 2. The \$250 civil penalty upon appellant Patterson is reduced
25

26
27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER 3

1 to \$125. Fifty dollars of the \$125 is payable, the remainder of the
2 penalty, \$75, is suspended on condition that appellant Patterson not
3 violate any provision of Regulation 1 for six months from the date
4 of this Order.

5 DATED this 19th day of December, 1979.

6 POLLUTION CONTROL HEARINGS BOARD

7
8 Mat W. Washington
9 NAT W. WASHINGTON, Chairman

10 Chris Smith
11 CHRIS SMITH, Member

12 David Akana
13 DAVID AKANA, Member